

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

MARCH 18, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-2177-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

LOIS WIMMER, d/b/a COMMUNITY LIVING,

Plaintiff-Appellant,

v.

**BOARD OF ZONING APPEALS of the
CITY OF MILWAUKEE, a municipal board,**

Defendant-Respondent.

APPEAL from an order of the circuit court for Milwaukee County:
MICHAEL J. BARRON, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. Lois Wimmer appeals from the trial court's order dismissing her case for lack of jurisdiction. The issue is whether the trial court attained personal jurisdiction over the Board of Zoning Appeals of the City of Milwaukee when Wimmer served the city clerk of the City of Milwaukee. Pursuant to this court's order dated September 5, 1996, this case was submitted

to the court on the expedited appeals calendar. See RULE 809.17, STATS. Upon review of the briefs and record, we affirm.

The Board of Zoning Appeals of the City of Milwaukee denied Wimmer's application for a variance for property she owned in the city. Wimmer sought judicial review of the Board's decision. She served the clerk of the City of Milwaukee with her summons and complaint, naming the Board of Zoning Appeals of the City of Milwaukee as a defendant. The Board of Zoning Appeals moved to dismiss the action on the ground that the summons and complaint was never served upon an "officer, director or managing agent" of the Board in accordance with § 801.11(4)(a)(7), STATS. The trial court agreed that the Board of Zoning Appeals had not been properly served and dismissed the action for lack of personal jurisdiction.

Whether the Board of Zoning Appeals was properly served depends on whether the Board is "a body politic" independent of the City of Milwaukee within the meaning of § 801.11(4)(a)(7), STATS. That statute provides that a court "may exercise personal jurisdiction over a defendant by service of a summons" in the following manner:

- (4) OTHER POLITICAL CORPORATIONS OR BODIES POLITIC. (a) Upon a political corporation or other body politic, by personally serving any of the specified officers, directors, or agents:
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 - 3. If against a city, the mayor, city manager or clerk thereof;
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 - 7. If against any other body politic, an officer, director, or managing agent thereof.

The supreme court has explained that a "body politic" for purposes of § 801.11(4)(a)(7) is an entity of elected or appointed members "who perform statutorily defined, important governmental functions entirely independent of the governmental entity which appoints [its] members." *Watkins v. Milwaukee County Civil Serv. Comm'n*, 88 Wis.2d 411, 417, 276 N.W.2d 775, 779 (1979).

We conclude that the Board of Zoning Appeals is sufficiently independent of the City of Milwaukee to constitute a "body politic" within the meaning of § 801.11(4)(a)7, STATS. Any city that enacts zoning regulations must establish a Board of Zoning Appeals. Section 62.23(7)(e)1, STATS. The Board's duties are statutorily defined, as is its scope of authority. The Board hears and decides appeals from the decisions made by administrative officials in the enforcement of the city's zoning ordinances. The Board also decides whether special exceptions exist and authorizes variances from city ordinances. The Board's independence from the city is underscored by the fact that the city itself may commence an action seeking review of a Board decision. Section 62.23(7)(e)10. In addition, the members of the Board are independent from influence by the city after appointment because they may not be removed unless there is a showing of "cause upon written charges after a public hearing." Section 62.23(7)(e)2.

Our conclusion is in accord with *Schwochert v. Marquette County Board of Adjustment*, 132 Wis.2d 196, 389 N.W.2d 841 (Ct. App. 1986), in which we implicitly ruled that the Marquette County Board of Adjustment, which is the county equivalent of the Board of Zoning Appeals of the City of Milwaukee, was sufficiently independent of the county to constitute a "body politic" pursuant to § 801.11(4)(a)(7), STATS. *Id.* at 206, 389 N.W.2d at 846.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.